

Decision 03-04-023 April 3, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Laguna Irrigation District,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 02-04-006
(Filed April 9, 2002)

ORDER EXTENDING STATUTORY DEADLINE

Public Utilities Code Section 1701.2(d) provides that adjudicatory matters such as this case shall be resolved within 12 months after they are initiated, unless the Commission makes findings why that deadline cannot be met and issues an order extending the 12-month deadline. In this proceeding, the 12-month deadline for resolving the case is April 9, 2003.

Background

The complaint in this case alleged that the defendant, Pacific Gas and Electric Company (PG&E), had wrongfully terminated an Electric Service Provider (ESP) service agreement that PG&E had entered into with complainant, the Laguna Irrigation District (Laguna), on March 5, 1999. The complaint sought two separate but related forms of relief. First, Laguna requested an "emergency order" (in the nature of a temporary restraining order) prohibiting PG&E from switching Laguna's energy customers back to PG&E bundled electric service, and to the extent that such a customer switch had already occurred, ordering PG&E

to return the switched customers back to direct access service from Laguna. Second, after "this initial safeguard is in place," Laguna sought a declaratory judgment holding that PG&E had no valid basis for terminating the ESP Service Agreement.

On May 23, 2002, PG&E filed an Answer and Statement of Position, as well as an Opposition to Request for Emergency Order. On June 10, 2002, the assigned Administrative Law Judge (ALJ) e-mailed counsel for both parties for the purpose of scheduling a prehearing conference (PHC).

The parties responded to the e-mail on June 12, 2002. On that date, counsel for PG&E telephoned the ALJ to inform him that, owing to the recent resignations of all five members of Laguna's Board of Directors, PG&E and Laguna had entered into a "standstill agreement" with respect to all of the outstanding litigation between them. In a follow-up letter dated June 13, 2002, counsel for PG&E requested a postponement of the PHC, attached the standstill agreement, and explained the background for it as follows:

"Over the past two weeks, all five members of the Laguna Irrigation District's Board of Directors have resigned. The Boards of Supervisors for Kings and Fresno Counties are now considering applications for new Board members. It is unclear exactly when the Board will be active again, or how the new Board will handle the four active litigation matters between PG&E and Laguna. Since the Board members' resignations, the last of which occurred just a few days ago, the parties have agreed to stop all activity in these four cases. The standstill shall remain in place until both (a) Laguna has a new active Board of Directors and (b) either party provides the other with 14 days written notice terminating the agreement. The objective of the standstill is to give Laguna enough time to appoint a new Board and resume its work, and allow the parties to determine how they wish to proceed in their litigation."

After the June 13 letter, there was no further communication from either party advising the Commission whether a new board for Laguna had been appointed, or what the likelihood was that this case might become active again.

On September 27, 2002, the ALJ issued a ruling proposing that this case be dismissed without prejudice. In his ruling, the ALJ noted that “if there is a dismissal without prejudice, Laguna's new board will be free to file a new complaint if the board ultimately concludes that Laguna has a live, ongoing dispute with PG&E requiring resolution by the Commission.” (ALJ Ruling, p. 3.) The ALJ also directed the parties to file comments no later than October 11, 2002, in the event either of them objected to the ALJ's proposal. Any party filing such comments was instructed to state what progress had been made in appointing new directors for Laguna, what the status of the standstill agreement was, and whether the parties had held any discussions about resuming active prosecution of this case. (*Id.*)

Both PG&E and Laguna made filings by the October 11 deadline. In its “statement of non-opposition,” PG&E simply said that it was not opposed to a dismissal without prejudice. Laguna's comments, on the other hand, asked for more time. Laguna noted that on June 26, 2002, a new Board of Directors had been sworn in and that, in the time since, the new board had been educating itself on the status of the litigation between Laguna and PG&E. Laguna pointed out that settlement negotiations were about to begin, and urged the Commission not to rock the boat while they were in progress:

“Laguna and PG&E have agreed to participate in a settlement process with the first meeting on October 10, 2002. During that meeting and in subsequent discussions, the parties will consider global settlement of all pending litigation. At this juncture, the settlement negotiations are being pursued while a delicate

standstill agreement is in place. The settlement process has a higher probability of success if the status quo is maintained.” (Laguna Comments, p. 1.)

Rather than dismiss this case, Laguna urged that the settlement process should be given time to work, and that it would be sufficient if a report on the status of the settlement negotiations (and on the need for a PHC in this case) were to be submitted by February 10, 2003. (*Id.* at 3.)

Consistent with Laguna’s request, we did not dismiss this case. However, as of March 14, 2003, neither Laguna nor PG&E had submitted any status report on the settlement discussions, or on the likelihood that this case might once again become active.

Discussion

Under the circumstances of this case, it is clear that the 12-month deadline set forth in Pub. Util. Code § 1701.2(d) cannot be met. The only record consists of the pleadings described above, and the parties have given us no information about the status of the settlement negotiations they agreed to commence in October 2002.

If it were not for the imminence of the 12-month deadline, we would be strongly inclined to dismiss this case without prejudice, since we have previously advised the parties of our preference for doing so, and they have not brought any information to our attention which would justify keeping this case open.

However, in view of the situation as it now stands, we have decided that the most appropriate course of action is to extend the 12-month deadline, but also to require the prompt submission of a status report in which the parties will be afforded a final opportunity to set forth the reasons, if there are any, why this docket should be kept open any longer. Absent a demonstration of unusually persuasive reasons why this case should be kept open, we intend to issue a

decision dismissing this case without prejudice within 60 days of the mailing date of this decision.

In keeping with this plan, we will order the parties to file a status report (or if they cannot agree on a joint report, separate reports) by the close of business on April 18, 2003. The report should describe the nature and extent of the settlement discussions between the parties, whether the parties expect to reach a full or partial settlement agreement (and if so, when),¹ and any reasons beyond those set forth in Laguna's October 11, 2002 comments for keeping this case open. Based on the status report, the ALJ should promptly decide whether to prepare a decision dismissing this case, or to hold a PHC for the purpose of scheduling the matter for hearing.

Comments on Draft Decision

Under Rule 77.7(f)(4) of the Commission's Rules of Practice and Procedure, the Commission may waive the otherwise-applicable 30-day period for public review and comment on a decision that extends the 12-month deadline set forth in Pub. Util. Code § 1701.2(d). Under the circumstances of this case, it is appropriate to waive the 30-day period for public review and comment.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and A. Kirk McKenzie is the assigned ALJ in this proceeding.

¹ The parties are reminded that under Commission Resolution No. A-4638, the Executive Director is authorized to dismiss a complaint case such as this one upon the unopposed, written request of the complainant. Such a request for dismissal need not set forth the terms of any settlement agreement the parties may have reached.

Findings of Fact

1. This case was filed on April 9, 2002.
2. The 12-month statutory deadline would be April 9, 2003, unless this date is extended pursuant to Pub. Util. Code § 1701.2(d).
3. In June 2002, owing to the resignation of all the members of Laguna's board of directors, the parties entered into a standstill agreement with respect to this case and three other litigation matters between them.
4. In its October 11, 2002 response to the ALJ ruling of September 27, 2002 suggesting that this case should be dismissed without prejudice, Laguna urged that more time should be granted before this case was dismissed so that the parties could conduct (and its newly-appointed board could consider) the global settlement discussions that the parties had agreed were appropriate.
5. Although Laguna's comments stated that the filing by February 10, 2003 of a status report concerning the settlement discussions would be appropriate, no such status report has been submitted.

Conclusions of Law

1. The 12-month statutory deadline imposed by Public Utilities Code Section 1701.2(d) cannot be met, and therefore should be extended until this proceeding is resolved.
2. The parties should be afforded a final opportunity to demonstrate, in a status report to be submitted within two weeks after the issuance date of this decision, why this case should not be dismissed without prejudice.

O R D E R

IT IS ORDERED that:

1. The 12-month statutory deadline in this proceeding, April 9, 2003, is extended until further order.
2. The parties to this proceeding shall file a joint status report (or, if they cannot agree on one, separate status reports) no later than April 18, 2003. Such status report shall describe the nature and extent of the settlement discussions between the parties, whether the parties expect to reach a full or partial settlement agreement (and if so, when), and any reasons beyond those set forth in Laguna's October 11, 2002 comments that would justify keeping this case open.

This order is effective today.

Dated April 3, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners